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**REGULAR**

**NUMBER:** 239.3

**TITLE:** AN ORDINANCE OF THE CITY OF MILPITAS REPEALING  
CHAPTER 16, TITLE XI OF THE MILPITAS MUNICIPAL CODE  
(URBAN RUNOFF AND WATERCOURSE PROTECTION) AND  
ADDING A NEW CHAPTER 16 TO TITLE XI OF THE MILPITAS  
MUNICIPAL CODE (STORMWATER AND URBAN RUNOFF  
POLLUTION CONTROL)

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting  
of \_\_\_\_\_, 2003, upon motion by Councilmember \_\_\_\_\_ and was adopted  
(second reading) by the City Council at its meeting of \_\_\_\_\_, 2003, upon  
motion by Councilmember \_\_\_\_\_. Said Ordinance was duly passed and ordered  
published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Gail Blalock, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 16 of Title XI of the Milpitas Municipal Code is hereby repealed and a new Chapter 16, entitled "Stormwater and Urban Runoff Pollution Control" is hereby added to the Milpitas Municipal Code in the form of Attachment "A" incorporated herein.

SECTION 2. CEQA. This ordinance is exempt from the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code pursuant to CEQA Guidelines Section 15308 as an action that assures the maintenance, restoration, enhancement or protection of the environment where the regulatory process involves procedures for protection of the environment.

SECTION 3. **EFFECTIVE DATE; PUBLICATION.** This ordinance shall take effect 30 days following its passage, and prior to the expiration of 15 days from the passage thereof shall be published at least once in the Milpitas Post, a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara, thenceforth and thereafter the same shall be in full force and effect.

SECTION 4. **SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

## ATTACHMENT “A”

### CHAPTER 16

#### STORMWATER AND URBAN RUNOFF POLLUTION CONTROL

Ordinance No.

Sections:

XI-16-1	Purpose
XI-16-2	Definitions
XI-16-3	Administration
XI-16-4	Limitations on Point of Discharge
XI-16-5	Discharge into Storm Drains Prohibited
XI-16-6	Permanent Stormwater Pollution Prevention Measures Required
XI-16-7	Inspection and Maintenance of Permanent Stormwater Pollution Prevention Measures
XI-16-8	Discharge Permitted Pursuant to NPDES Permit
XI-16-9	Public Nuisance
XI-16-10	Protection from Accidental Discharge
XI-16-11	Accidental Discharge – Notification of Discharge
XI-16-12	Watercourse Protection
XI-16-13	Outdoor Storage of Materials
XI-16-14	Enforcement and Penalties
XI-16-15	Use of Proceeds of Fines and Penalties
XI-16-16	Connection Fees

## XI-16-1 PURPOSE

The purpose of this chapter is to provide regulations and give legal effect to certain requirements of the National Pollutant Discharge Elimination System (NPDES) permit No. CAS029718, as amended by Order No. 01-119, issued to the City of Milpitas regarding municipal storm water and urban runoff requirements. This chapter is necessary to protect the health and safety of the residents of Milpitas and the surrounding region. This chapter shall apply to all water entering the City of Milpitas storm drain system generated on any developed and undeveloped lands lying within the City. This chapter shall be construed to ensure consistency with the requirements of federal and state law, and any applicable implementing regulations, as they exist at the time of enactment or as later amended.

## XI-16-2 DEFINITIONS

For the purposes of this chapter, the following words and phrases shall have the meaning given to them in this section. Words and phrases not defined in this chapter shall have the definitions set forth in the permit or by the regulations implementing the National Pollutant Discharge Elimination System, Clean Water Act section 402, and division 7 of the California Water Code, as they currently exist or may be amended.

- (a) “Applicable Materials” means all materials used in industrial or commercial establishments that are stored outdoors, that may be exposed to stormwater, and that have the reasonable potential to degrade the quality of runoff from the site. These include, but are not limited to, grease, garbage, and all materials containing cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, and zinc, which are pollutants that have specifically been identified as known to contribute to impairment of applicable water quality standards.
- (b) “City” means and includes all the territory lying within the municipal boundaries of the City of Milpitas as existing as of the date of adoption of this ordinance, plus all territory which may be added thereto during the effective term of this ordinance.
- (c) “Development Project” means any private or public, commercial, industrial or residential development that results in the creation of one acre (43,560 square feet) or more of new impervious surface, including but not limited to parking lots, roof area, streets, roads, highways, freeways and sidewalks. Development Project does not include those projects for which a privately-sponsored development application has been deemed complete or, with respect to public projects, for which funding has been committed and for which construction is scheduled by October 15, 2003.

- (d) “Discharge” when used as a verb, means to allow pollutants to directly or indirectly enter storm water, or to allow storm water or non-storm water to directly or indirectly enter the storm drain system from an activity or operation. When used as a noun, “discharge” means the pollutants, storm water and/or non-storm water that is discharged.
- (e) “Permanent Stormwater Pollution Prevention Measures” means any combination of source control measures, site design measures, and/or post-construction stormwater treatment measures that reduce stormwater pollution to the maximum extent practicable as required by NPDES Permit No. CAS029718 as amended by Order No. 01-119 issued by the California Regional Water Quality Control Board, San Francisco Bay Region.
- (f) “Significant Redevelopment Project” means any private or public project on a previously developed site that results in the addition or replacement which when combined total one acre (43,560 square feet) or more of impervious surface, including but not limited to roof area, parking lots, streets and sidewalks, but not including interior remodels nor routine maintenance or repair, such as roof, exterior surface replacement, painting and repaving.
- (g) “Storm Drain” means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying storm water, and which is not used for collecting or conveying sewage.
- (h) “Storm Water” or “Stormwater” means water that originates from atmospheric moisture (rainfall or snowmelt) and that falls onto land, water or other surfaces. Without any change in meaning, this term may be spelled or written as one word or as two separate words.
- (i) “Urban Runoff” means surface water flow produced by storm and non-storm events. Non-storm events include flow from residential, commercial and/or industrial activities including the use of potable and non-potable water.

#### XI-16-3 ADMINISTRATION

This chapter and NPDES Permit No. CAS029718, as amended by Order No. 01-119 shall be implemented, administered, and enforced by the City Manager. The City Manager is hereby authorized to develop, implement, and enforce such policies, procedures, and regulations as may be necessary for compliance with the City’s NPDES permit(s). Any powers granted to or duties imposed upon the City

Manager to administer, implement, and enforce the provisions of this chapter may be delegated to other City personnel.

XI-16-4      LIMITATIONS ON POINT OF DISCHARGE

No person shall discharge any substance directly into a manhole or other opening in a City-owned or City-maintained storm drain or watercourse other than through a City-approved storm drain connection.

XI-16-5      DISCHARGE INTO STORM DRAINS PROHIBITED

It shall be unlawful to discharge, cause, allow, or permit to be discharged into any storm drain or watercourse all wastes or pollutants including, but not restricted to, sewage, industrial wastes, petroleum products, coal tar or any refuse substance arising from the manufacture of gas from coal or petroleum, chemicals, polluted cooling water, all kinds of detergents, solvents, paints, contaminated or chlorinated swimming pool water, pesticides, herbicides and fertilizers, weeds, rubbish, refuse or dirt, garbage, fruits, vegetables, grease, pollutants, animal wastes, turbid fluids, and vehicle wash rinse water unless permitted in Section XI-16-8.

Allowable discharges shall not cause any impairment in the beneficial uses or quality of water of the state as defined in the California Water Code or any special requirements of the Regional Water Quality Control Board, San Francisco Bay Region or injure or interfere with the operation of any watercourses within the State.

XI-16-6      PERMANENT STORMWATER POLLUTION PREVENTION MEASURES REQUIRED

- (a) All Development Projects not participating in a waiver and/or alternative compliance program pursuant to Section XI-16-6 (e) shall include Permanent Stormwater Pollution Prevention Measures in order to reduce water quality impacts of urban runoff from the entire project site for the life of the project.
- (b) All Significant Redevelopment Projects not participating in a waiver and/or alternative compliance program pursuant to Section XI-16-6 (e) shall include Permanent Stormwater Pollution Prevention Measures in order to reduce water quality impacts of urban runoff for the life of the project.
  - (1) Significant Redevelopment Projects that result in an increase of, or replacement of, more than fifty (50) percent of the impervious surface of a previously existing development shall include Permanent Stormwater Pollution Prevention Measures

sufficient to reduce water quality impacts of urban runoff from the entire site for the life of the project.

- (2) Significant Redevelopment Projects that result in an increase of, or replacement of, fifty (50) percent or less of the impervious surface of a previously existing development shall include Permanent Stormwater Pollution Prevention Measures sufficient to reduce water quality impacts of urban runoff from the increased or replaced portion of the site for the life of the project.
- (c) Permanent Stormwater Pollution Prevention Measures must be incorporated into all applicable plan documents. All plan documents and construction activities are subject to inspection and approval by the City.
- (d) No final building or occupancy permit shall be issued without the written certification of the City Manager or his or her designee that the requirements of this chapter have been satisfied. Such certification shall be in the form prescribed by the City and shall not be issued without payment of all applicable fees, if any, which may be imposed for administration of this Chapter.
- (e) Alternative Compliance. Any applicant may request to participate in a waiver and/or alternative compliance program in accordance with any policies, procedures and regulations adopted pursuant to the authority granted in Section XI-16-3.
- (f) Nothing in this section shall prohibit the City from requiring stormwater treatment measures for private or public, commercial, industrial or residential projects that result in the creation of less than one acre of new impervious surface.

#### XI-16-7 INSPECTION AND MAINTENANCE OF PERMANENT STORMWATER POLLUTION PREVENTION MEASURES

- (a) The property owner(s), its administrators, successors, or any other persons, including any homeowners association, shall take all necessary actions to ensure that Permanent Stormwater Pollution Prevention Measures or other required stormwater treatment measures are properly maintained so that they continue to operate as originally designed and approved for the life of the development. The City Manager may require verification of proper maintenance be submitted to the City. Any property owner that has been required by this Chapter to construct, install, operate or maintain Permanent Stormwater Pollution Prevention Measures or other stormwater treatment measures shall record against the property a document evidencing the permanent maintenance requirement and binding all successors in interest to the maintenance obligation. Prior to

recording, this document shall be approved as to form and legality by the City Attorney's Office.

- (b) Upon transferring ownership of the property, any property owner that has been required by this Chapter to construct, install, operate or maintain Permanent Stormwater Pollution Prevention Measures or other stormwater treatment measures shall provide the new owners with a current copy of this Chapter, and inform the new owners in writing of their obligation to properly operate and maintain the Permanent Stormwater Pollution Prevention Measures.
- (c) It shall be unlawful to alter, modify, change or remove any Permanent Stormwater Pollution Prevention Measures or other stormwater treatment measures without first obtaining the written certification of the City Manager or his or her designee that the requirements of this Chapter have been satisfied.
- (d) Whenever necessary to make an inspection to enforce any provision of this Chapter, or whenever the City Manager or his or her designee has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Chapter, the official may enter such premises at all reasonable times to inspect the premises, to inspect and copy records related to storm water compliance, and to collect samples and take measurements. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the City Attorney is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

#### XI-16-8 DISCHARGES NOT PROHIBITED

The provisions of this Chapter shall not prohibit:

- (a) A discharge authorized by, and in full compliance with, an NPDES permit (other than NPDES permit No. CAS029718);
- (b) A discharge or flow resulting from fire fighting by the Fire Department;
- (c) Agricultural stormwater runoff;
- (d) Diverted stream flows;
- (e) Discharges from naturally occurring springs;
- (f) Rising ground waters;
- (g) A discharge or flow from lawn watering or landscape irrigation;
- (h) Uncontaminated groundwater infiltration;
- (i) Uncontaminated discharge or flow from a foundation drain, crawl space pump, or footing drain;
- (j) A discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;



- (k) A discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;
- (l) A discharge or flow from individual car washing;
- (m) A discharge or flow from a riparian habitat or wetland;
- (n) Dechlorinated swimming pool discharges
- (o) Other categories approved by the Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region or an authorized representative.

Although not prohibited, the use of nickel and copper as roof materials is discouraged in favor of benign roof materials.

#### XI-16-9 PUBLIC NUISANCE

Any violation of this Chapter is hereby declared to be a public nuisance and the City may abate the violation in the manner provided for in Chapter 500 of Title V of this Code.

#### XI-16-10 PROTECTION FROM ACCIDENTAL DISCHARGE

Each person shall provide protection from accidental discharge of prohibited materials or other wastes regulated by this Chapter into any storm drain or watercourse. Facilities to prevent accidental discharge or prohibited materials shall be provided and maintained at the person's expense.

#### XI-16-11 ACCIDENTIAL DISCHARGE – NOTIFICATION OF DISCHARGE

- (a) All persons shall notify the City by telephone immediately by dialing 911 upon accidentally discharging any material other than an acceptable discharge into a storm drain or watercourse to enable countermeasures to be taken by the City to minimize damage to storm drains and the receiving waters. The City, at its sole option, may direct the person or persons responsible for the discharge to perform cleanup activities when it is deemed by the City that the person or persons have the capability to perform such activities.
- (b) This notification shall be followed, within ten (10) days of the date of occurrence, by a detailed written statement to the City Manager or his/her designee describing the causes of the accidental discharge and the measures being taken to prevent future occurrences. Such notification will not relieve persons of liability for violations of this Chapter or for any fines imposed on the City on account thereof under Section 13350 of the California Water Code, or for violation of Section 5650 of the California Fish and Wildlife Code, or any other applicable provisions of state or federal law.

## XI-16-12 WATERCOURSE PROTECTION

- (a) Watercourse Protection Requirements. Every person owning, operating, or leasing property through which a watercourse passes shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse so that such structures will not become a hazard to the use, function or physical integrity of the watercourse. The owner or lessee shall not remove healthy bank vegetation beyond that actually necessary for maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion. The use of native vegetation in stream buffer areas is encouraged.
- (b) Acts Requiring Permit. No person shall commit or cause to be committed any of the following acts, unless an encroachment permit or an approved plan has been issued by the City Manager or his or her designee to the applicant:
  - (1) Construct, alter, enlarge, connect to, discharge to, change, or remove any structure in a City-owned or City-maintained watercourse;
  - (2) Modify the natural flow of water in a City-owned or City-maintained watercourse;
  - (3) Deposit in, plan in, or remove any material from, a City-owned or City-maintained watercourse, including its banks, except as required for necessary maintenance.
- (c) Suspension or revocation. The City Manager or his/her designee may suspend or revoke a permit issued under this title whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance, the terms of the permit, regulations, or any of the provisions of this Chapter.

## XI-16-13 OUTDOOR STORAGE OF MATERIALS

- (a) Proper Outdoor Storage of Materials Required. All applicable materials stored outdoors at a commercial or industrial establishment shall be managed in a manner that minimizes the discharge of pollutants to storm water and is required to meet water quality standards. Establishments covered by the General NPDES Permit for Storm Water Discharges Associated with Industrial Activities that has been promulgated for Santa Clara County by the California Regional Water Quality Control Board,

San Francisco Bay Region, shall address this requirement in applicable provisions of their Stormwater Pollution Prevention Plan (SWPPP).

- (b) Protection against Accidental Discharge. Each property owner, its administrators, successors or any other persons who store applicable materials outdoors at a commercial or industrial establishment shall provide protection against the accidental discharge of prohibited materials to the City's storm drain system or Watercourse. Such protection may include, but is not limited to, secondary containment systems or any equivalent protective measures. Any system that includes the permanent modification of a building, site, or the addition of a building or structure, shall be submitted to the City's Planning Department and Building Division for approval in accordance with applicable codes. All facilities to prevent the accidental discharge of prohibited materials to the City's storm drain system or watercourse shall be provided and maintained at the owner or operator's expense.
- (c) Report of Accidental Discharge to the Storm Drain. The property owner, its administrators, successors, or any other persons shall notify the City of any accidental discharge to the City's storm drain system or watercourse as described in Section XI-16-11 of this Code. Each commercial or industrial establishment shall also retain an on-site written record of all accidental discharges of prohibited materials (whether or not such discharge actually entered the City's storm drain system or watercourse) and the actions taken to prevent their reoccurrence. Such records shall be retained for at least five years.
- (d) Posted Notice. Each commercial or industrial establishment shall permanently post in a conspicuous place on the premises of the establishment a notice advising employees of the requirements of Section XI-16-13 and the telephone number to call in case of such an accidental discharge.

#### XI-16-14 ENFORCEMENT AND PENALTIES

- (a) Criminal Penalties. Violations of the provisions of this Chapter shall be subject to criminal penalties as provided in Section I-1-4.09-1 of this Code.
- (b) Judicial Civil Penalties. Any person who intentionally or negligently violates any provision of this chapter or any provision of any permit or certificate issued pursuant to this chapter shall be civilly liable to the city in a sum of not to exceed twenty-five thousand dollars per day for each day in which such violation occurs.

- (c) Administrative Citations. When the City Manager and/or his/her designee determines that one or more violations of this Chapter have occurred an administrative citation may be issued pursuant to the procedures set forth in sections V-500-8.00 through V-500-8.06. The schedule of fines for administrative citations issued for violations of this Chapter shall be set forth in the schedule of fines established by resolution of the City Council.
- (d) Notice of Noncompliance. Unless the severity of the violation warrants immediate action or certificate revocation or suspension, the City Manager or his or her designee shall issue a notice of noncompliance that shall enumerate the violations found and shall order compliance by a date certain. If the violations are not abated in the time period identified, further action may be taken by the City Manager or his or her designee, including, but not limited to, suspension, revocation or modification of a certificate or permit. The City Manager or his or her designee may also require a discharger that has violated any discharge limits contained in this chapter to install a temporary system for the capture, testing, and release of stormwater.
- (e) Suspension of Utility Service. The City may, without prior notice, suspend water service, sanitary sewer service, and/or storm drain discharge access to a person discharging to the storm drain system when such suspension is necessary to stop an actual or threatened discharge which (1) presents, or may present, imminent and substantial danger to the environment or to the health or welfare of persons, or (2) presents, or may present, imminent and substantial danger to the storm drain system.
- (f) Remedies Cumulative. The remedies provided in this section are cumulative and not exclusive, and shall be in addition to any other penalty provided for in this Chapter and shall be in addition to all other remedies available to the City under state and federal law.

#### XI-16-15 USE OF PROCEEDS OF FINES AND PENALTIES

Funds collected pursuant to this Chapter shall be paid to the City's urban runoff violation account and may be used for any purpose related to this Chapter or the City's implementation, administration, or enforcement of NPDES Permit No. CAS029718.

#### XI-16-16 CONNECTION FEES

Prior to connection or discharge to any storm drain facility (directly or indirectly), connectors shall pay City a fee for connection/discharge to the City's storm drain system as follows:

- A. \$1,100 per parcel for single family medium density with parcel size equal or smaller than 8,710 square feet (1/5 acre).
- B. \$1,916 per parcel for single family low density, with parcel size between 8,711 and 43,560 square feet (between 1/5 and 1 acre).
- C. \$3,594 per parcel for single family with parcel size between 43,561 and 174,240 square feet (between 1 acre and 4 acres).
- D. \$4,792 per parcel for single family with parcel size between 174,241 and 392,040 (between 4 and 9 acres).
- E. \$6,469 per parcel for single family with parcel size greater than 392,040 square feet (9 acres).
- F. \$16,771 per acre for multi-family developments.
- G. \$21,562 per acre for all others (such as commercial, industrial, institutional, or mixed use sites).
- H. \$7,187 per acre for schools (with athletic fields), otherwise consider as institutional.
- I. \$4,792 per acre for parks.

The purpose of the fee imposed by this section is to fund facilities (whether presently in existence or not) necessary to provide storm drain services, and revenues derived from the fee imposed by this section shall be used solely for that purpose.